



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Norbert Wolters et al
Examiner: Arpad F. Kovacs
Serial No.: 09/727,134 Group Art Unit 3671
Filed: 30 November 2000 (Atty. Ref. No. 08874-US)
For: ROW INSENSITIVE GATHERING DEVICE FOR AN AGRICULTURAL
HEADER

Moline, IL 61265

5 November 2002

APPLICANT'S APPEAL BRIEF

The Honorable Commissioner
of Patents and Trademarks
Washington, D.C. 20231
Sir:

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Real Party in Interest

The real party in interest is Mashchinenfabrik Kemper GmbH & Co. KG (hereinafter Kemper) having its principle place of business in Breul, 48703 Stadtlohn, Germany, Kemper became the real party in interest by an assignment dated 15 November 2000 and recorded with the Patent Office on 30 November 2000, Reel 011358 Frame 0264.

Related Appeals and Interferences

The Board's attention is directed to an Appeal in US Patent Application 09/751,512, filed 22 November 2000 having similar issues on constructing the prior art and claim language.

Status of Claims

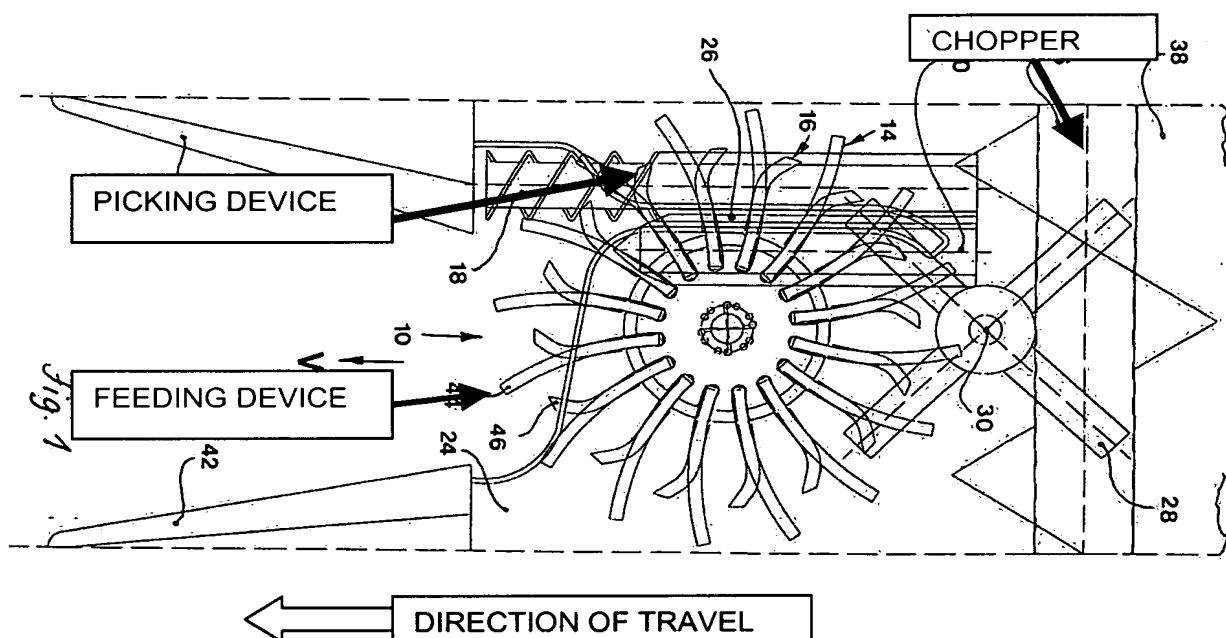
Claims 1-13, 15 and 17-21 are currently pending in the above-identified application. Claims 1-7, 20 and 21 stand finally rejected, by the examiner. Claims 8-13, 15 and 17-19 stand objected to by the examiner as depending from rejected base claims. A correct copy of the claims is found in the attached appendix.

Status of Amendments

There are no outstanding amendments.

Summary of the Invention

A feeding and picking device 10 for a standing agricultural crop is provided with a rotating feeding device 14 and 16. The feeding device 14 and 16 is rotated about a vertical feeding axis engages the standing crop and directs it to a picking device. The picking device comprises a snapping channel 26 formed by snapping bars 24 under which is located snapping rolls 18 and 20. For standing corn the snapping rolls 18 and 20 pull the corn stalk downwardly. The snapping channel 26 is too small for the ears of corn so the ears are snapped off the stalks. The feeding device 14 and 16 comprises a disc having fingers 46 that overlap the snapping channel 26. The feeding device 14 and 16 is designed to transport the plant throughout the effective length of the picking device.



Issue

The issue is:

1. Does the chopper 22 disclosed in PCT reference WO 99/03323 teach a feeding device for grasping and directing plant stalks to a picking device?

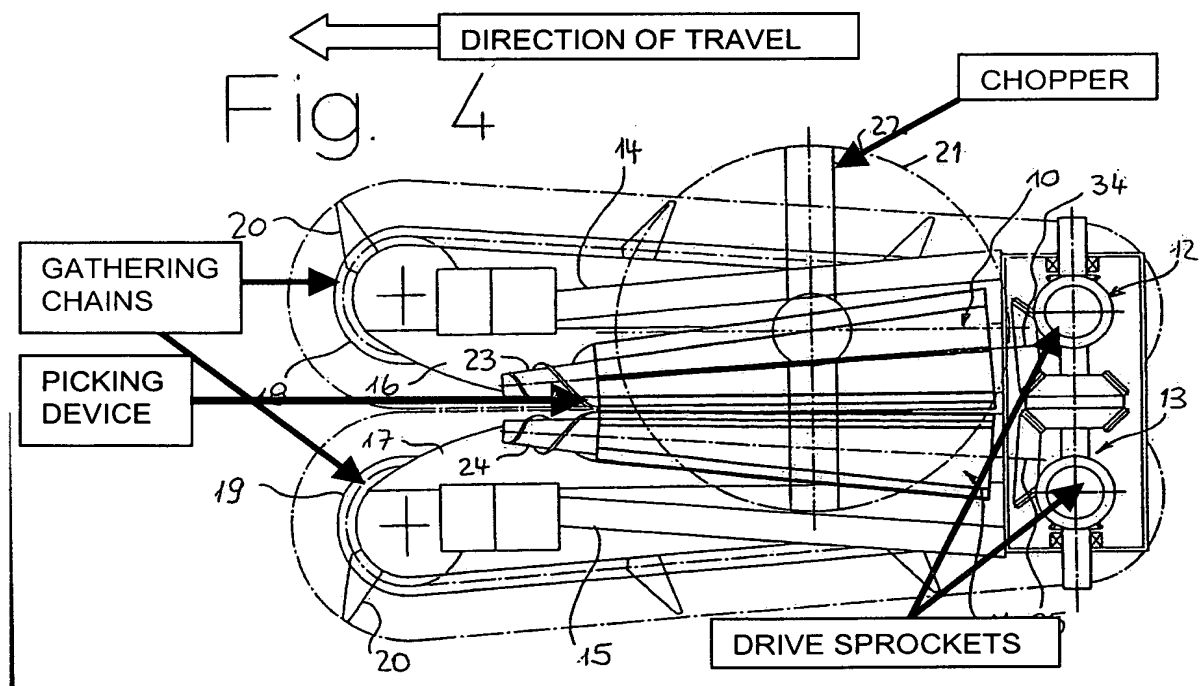
Grouping of Claims

Rejected claims 1-7, 20 and 21 stand and fall together.

Argument

Rejection

The currently pending claims include three independent claims 1, 2 and 20. These independent claims call for "...a rotating feeding element that is rotated about a vertical axis and comprises a body with outwardly extending fingers,". The Examiner finally rejected pending claims 1-4, 20 and 21, under 35 USC 102(b), as being anticipated by WO 99/03323. The examiner's position is that WO 99/03323 discloses a feeding and picking device for a standing crop wherein the feeding device comprises a chopping device 22. The examiner asserts that the chopping device 22 grasps or transports the crop through the effective length of the picking device (best illustrated in Figure 4). In rejecting US Patent Application 09/751,512, identified above as a related appeal, another examiner (Mammen) used this same reference and asserted that the feeding device was formed by gathering chains 18 and 19 that extend between a driven sprocket and a drive sprocket and that device 22 comprises a chopper. The applicant has never challenged the examiner's position that device 22 is a chopper.



All of the currently pending independent claims 1, 2 and 20 call for a rotating feeding element that grasps plant stalks and directs the plant stalks to the picking device. The chopping device 22 would chop not grasp the stalks. Furthermore, the chopping device 22 is located behind the entrance to the picking device and as such cannot direct the stalks to the picking device, but only chop the stalks as they are pulled downwardly by the stalk rolls.

The examiner finally rejected dependent claims 5-7, under 35 USC 103, as being obvious over WO 99/03323 in view of Thompson and Pottinger et al.

Issue

This is truly a case of first impression.

WO 99/03323 discloses a feeding and picking device having a relatively conventional feeding assembly comprising two gathering chains that follow an oblong path. A chopping device of the type disclosed in WO 99/03323 does not grasp and direct plant stalks but rather chops stalks as they are pulled downwardly by the stalk rolls. This interpretation is further buttressed by another examiner's characterization of this reference in the related appeal of US Patent Application 09/751,512.

Anticipation, under 35 USC 102, requires that a single prior art reference teach every aspect of the claimed invention either expressly or inherently. See Verdegaal Brothers Inc. v. Union Oil Company of California, 814 F.2d 628, 631, 2 USPQ 1051, 1053 (Fed. Cir. 1987). The chopping device 22 of WO 99/03323 does not teach a feeding device for grasping plant stalks and directing them to a picking device as called for in the currently pending independent claims. Therefore WO 99/03323 does not anticipate claims 1, 2 and 20, and as such, claims depending therefrom are also valid.

Reversal of the rejection is respectfully requested.

Any fees or charges due under 37 CFR 1.17(f) or otherwise due as a result of filing of the present paper may be charged against Deposit Account 04-0525. Two duplicates of this page are enclosed.

Respectfully,



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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, DC 20231, on 5 Nov 02
Date

Deere & Company

Cindy Whitacre 5 November 2002
Signature Date

Appendix

1. A feeding and picking device for feeding and picking a standing agricultural crop wherein individual plants in the crop are provided with plant stalks, the device comprising a rotating feeding element that is rotated about a vertical axis and comprises a body with outwardly extending fingers, the rotating feeding element grasps plant stalks and directs the plant stalks to a picking device which separates useable parts from plant stalks, the picking device having an effective length, wherein rotating feeding element is designed to transport the plant throughout the effective length of the picking device.

2. A feeding and picking device for feeding and picking a standing agricultural crop wherein individual plants in the crop are provided with plant stalks, the device comprising a rotating feeding element that is rotated about a vertical axis and comprises a body with outwardly extending fingers, the rotating feeding element grasps plant stalks and directs the plant stalks to a picking device which separates useable parts from plant stalks, wherein the feeding device is designed to support the plant stalk while it is being processed by the picking device.

3. A feeding and picking device as defined by claim 1 wherein the picking device is provided with a snapping channel, the feeding device covers the snapping channel.

4. A feeding and picking device as defined by claim 3 wherein gaps are formed between the outwardly extending fingers, plant stalks are captured in the gaps, the gaps are sufficiently deep to ensure that they pass over the snapping channel of the feeding element.

5. A feeding and picking device as defined by claim 4 wherein the device is provided with two rotating feeding elements, an upper feeding element and a lower feeding element, the upper feeding element has a direction of rotation, the upper feeding element is provided with outwardly extending fingers that are curved away from the direction of rotation.

6. A feeding and picking device as defined by claim 5 wherein the lower feeding element is located beneath the upper feeding element.

7. A feeding and picking device as defined by claim 6 wherein the lower feeding element has a direction of rotation that is identical to the direction of rotation of the upper feeding element.

8. A feeding and picking device as defined by claim 7 wherein the lower feeding element is provided with outwardly extending fingers that are curved towards the direction of rotation.

9. A feeding and picking device as defined by claim 8 wherein the picking device is mounted on the side of the feeding device.

10. A feeding and picking device as defined by claim 9 wherein the picking device is provided with an inlet, the inlet being located in front of the vertical axis of the feeding device.

11. A feeding and picking device as defined by claim 10 wherein the lower feeding element has a lower element diameter and the upper feeding element has an upper element diameter, the lower element diameter is smaller than the upper element diameter.

12. A feeding and picking device as defined by claim 10 wherein the lower feeding element has a lower element diameter and the upper feeding element has an upper element diameter, the lower element diameter is equal to the upper element diameter.

13. A feeding and picking device as defined by 10 claim wherein the lower feeding element is provided with a lower vertical axis and the upper feeding element is provided with an upper vertical axis, the lower vertical axis and the upper vertical axis are coaxial.

15. A feeding and picking device as defined by claim 10 wherein the upper feeding element has the same number of fingers as the lower feeding element.

17. A feeding and picking device as defined by claim 10 wherein the picking device further comprises a snapping bar and at least one snapping roll, the at least one snapping roll extends parallel to the snapping channel and is mounted under said snapping bar.

18. The feeding and picking device as defined by claim 17 wherein said feeding and picking device has a direction of travel, the snapping channel extends

parallel to the direction of travel.

19. The feeding and picking device as defined by claim 17 wherein said feeding and picking device has a direction of travel, the snapping channel extends at an angle to the direction of travel.

20. A crop harvesting machine having at least two feeding and picking devices, wherein each feeding and picking device feeds and picks a standing agricultural crop wherein individual plants in the crop are provided with plant stalks, the device comprising a rotating feeding element that is rotated about a vertical axis and comprises a body with outwardly extending fingers, the rotating feeding element grasps plant stalks and directs the plant stalks to the picking device which separates useable parts from plant stalks, the picking device having an effective length, wherein the rotating feeding element is designed to transport the plant throughout the effective length of the picking device.

21. A crop harvesting machine as defined by claim 20 having a symmetrical line, feeding and picking devices are symmetrically arranged with respect to each other about the symmetrical line.